STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ZAYLAH JAYHADA NICOLE HENDRICKS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JANIKA NICOLE HENDRICKS,

Respondent-Appellant.

UNPUBLISHED
June 17, 2003

No. 245808
Washtenaw Circuit Court
Family Division
LC No. 98-024678-NA

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's order terminating her parental rights to the minor child following her execution of a voluntary release of her parental rights. MCL 710.29. We affirm.

I

This case commenced in April 1998, when the minor child arrived in foster care because respondent had left her home alone. Through November 1999 respondent completed some elements of her parent-agency treatment plan, including parenting classes and a substance abuse evaluation, and submitted some negative drug screens. However, respondent did not adhere to her visitation schedule and also submitted a drug screen that tested positive for cocaine. Although the circuit court ordered petitioner to file a petition to terminate respondent's parental rights in November 1999, a petition was never filed due to a delay and respondent's newly motivated participation in her treatment plan.

From late 1999 through December 2001, respondent completed her treatment plan requirements, including a psychological evaluation, attendance at substance abuse treatment meetings, maintained employment, and a suitable residence. Respondent also consistently submitted negative drug screens. As a result, the child was returned to respondent's care in September 2001. However, by March 2002 the child reentered foster care after respondent

allegedly relapsed into substance abuse and, without notice, left the child on her paternal grandparents' doorstep.

On the date of the scheduled trial regarding a May 2002 supplemental petition to terminate respondent's parental rights, respondent executed a release of her parental rights to the child pursuant to MCL 710.29. Respondent subsequently sought rehearing, requesting withdrawal of the release, which the circuit court denied.

II

Respondent first argues that the circuit court erred, on a number of grounds, in refusing to vacate her release on rehearing. This Court reviews a trial court's decision whether to permit a parent to revoke a prior release of parental rights for an abuse of discretion. *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999); *In re Blankenship*, 165 Mich App 706, 713; 418 NW2d 919 (1988).

A

Respondent first contends that the circuit court failed to adhere to statutory requirements regarding the execution of a release. However, our review of the transcript of the release hearing reveals that the circuit court carefully and extensively investigated respondent's understanding of her parental rights, and properly ascertained her willingness to release those rights. Contrary to respondent's argument on appeal, the circuit court elicited denials by respondent to several questions regarding whether she had received any promises, felt "coerced or pushed in any way," or knew of any other reason she "could not make a voluntary, informed decision" regarding release of her parental rights. The court's lengthy colloquy with respondent satisfied the statutory requirement for an investigation into the knowing and voluntary nature of respondent's execution of the release. MCL 710.29(6); *In re Curran*, 196 Mich App 380, 381-382, 385; 493 NW2d 454 (1992); *In re Blankenship, supra* at 712, 714. Furthermore, the written release form and the statement accompanying the release that respondent signed at the hearing satisfied the additional requirements of MCL 710.29(1) and (5)(a) through (f).

B

Respondent also suggests that her release did not qualify as knowing because the circuit court incorrectly described the scope of her right to a rehearing to address a withdrawal of the release. Our review of the release hearing transcript reveals that the circuit court properly advised respondent, in a manner consistent with MCL 710.64 and MCR 3.806, that she had a right to request a rehearing of her release within twenty-one days, but that this right did not vest in her an automatic entitlement to reverse her decision regarding the release.[1]

[1] Respondent acknowledges in her brief on appeal that "the Court stated that it had the discretion to 'revoke' consent," which correctly describes the applicable law. See *In re Myers*, 131 Mich App 160, 163-164; 345 NW2d 663 (1983).

C

To the extent respondent suggests that the circuit court erred in failing to further apprise her that she would have to prove on rehearing that the release did not serve the child's best interests, respondent provides no authority describing any such obligation by the court.[2] See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002) (noting that a party cannot rely on this Court to search for authority to sustain or reject her position).

D

Respondent next argues that the circuit court abused its discretion in refusing to permit her to withdraw the release, which was rendered involuntary because, in executing the release, respondent relied on promises by the child's paternal grandparents, who were the prospective adoptive parents, that she and the child could maintain a mother-daughter relationship. At the hearing regarding respondent's petition to withdraw her release, the court reviewed its accurate notes and recollections concerning the prior, ample efforts to ensure the knowing and voluntary nature of respondent's release, and respondent's repeated denials that any promises or other coercions influenced her execution of the release. Accordingly, we cannot characterize as establishing good cause for withdrawing the release respondent's subsequent, bare and contradictory assertions that the paternal grandparents' "strong assurances" of an opportunity to visit induced her execution of the release. MCR 3.806(B).[3]

Respondent's further contention at the hearing that her unpreparedness for the scheduled June 2002 termination hearing also pressured her decision to release her parental rights appears without merit in light of the facts that: (1) respondent failed to explain with any specificity what preparation she would liked to have done before the termination hearing that she was precluded from accomplishing; (2) at the time of the filing of the first termination petition in March 2002, the child had resided in foster care for three years and eleven months, during which period respondent had abundant opportunities to engage in treatment and obtain information and witnesses supportive of her position against termination of her parental rights; and (3) during the

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[2] In support of her assertion, respondent cites *In re Burns*, *supra* at 292-293, wherein this Court stated that, "[b]ecause [the] petitioner's release was both knowing and voluntary *and because [the] petitioner sought rehearing on the specific ground of a change of heart*, the family court properly relied on the best interests of the child for guidance when determining whether to vacate [the] petitioner's release." (Emphasis added). In this case, however, respondent did not seek a rehearing on the specific ground of a change of heart, but instead challenged the voluntariness of the release. Moreover, although this Court in *In re Burns*, *supra* at 293 n 1, "urge[d] creation of a clearly worded uniform release advice form so that parents will understand that, although there is a technical right to rehearing within twenty-one days, that right will not permit the court to set aside the release unless it is convinced that it is in the best interest of the child to do so," the Court neither concluded itself nor referred to any other authority holding that, in obtaining a parental release, a circuit court must inform the parent that a rehearing depends on the involved child's best interests.

[3] Moreover, as respondent acknowledged at the hearing, she in fact had at least two visits with the child during the past month or two.

approximate four-year period in which these proceedings were pending, respondent had representation by counsel to assist in her efforts to demonstrate the impropriety of terminating her parental rights.

E

In her last assertion of error concerning the release and rehearing procedure, respondent correctly observes that the circuit court did not make specific findings regarding the child's best interests at either the release hearing or the subsequent hearing regarding respondent's petition to withdraw the release. At the release hearing, however, after finding respondent's release knowing and voluntary, the court solicited from the attorney representing the child's interests his opinion regarding the propriety of the release. The attorney responded that "given the history of this case . . . my opinion is that the release is in my client's best interest."[4]

We find that, given the four-year duration of the child's placement in foster care, and respondent's apparent relapse into substance abuse in early 2002 after extensive opportunities to engage in treatment, the release of respondent's parental rights served the child's best interests in obtaining some permanency and stability in her life. In addition to these facts, the general case history mentioned at the release hearing demonstrates that the release of respondent's parental rights furthered the child's best interests. We further note that in seeking rehearing respondent did not show or even argue that the child's best interests would be served by a further extended placement in foster care,[5] and respondent cites no authority in support of her request for a remand for more specific determinations regarding the child's best interests. Accordingly, we find no need to remand the case for additional findings. MCR 3.806(B); *Sherman*, *supra*.

F

In summary, we cannot conclude that the referee abused his wide discretion in denying respondent's petition to withdraw her release. *In re Blankenship*, *supra* at 713; see also *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959) (explaining that "[w]here, as here, the exercise of discretion turns upon a factual determination made by the trier of facts, an abuse of

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[4] We note also that the presiding referee had familiarity with the history of the case because he presided at four of the five hearings immediately preceding the release hearing.

[5] In support of her petition to withdraw her release, respondent alleged in relation to the child's best interests only that the court should order that she have monthly overnight visits with the child because she had remained substance free for three months. While respondent's avoidance of substances for several months constitutes a noteworthy accomplishment, it does not render the release of her parental rights contrary to the child's best interests, especially in light of the history of the case showing respondent's 2002 relapse into substance abuse after years of participation in treatment. The other subjects discussed within respondent's handwritten letter requesting rehearing, specifically (1) her complaints regarding her perception of unfairness that the child's biological father, whose parental rights were terminated, still had contact with the child, and (2) her nonspecific characterizations of the "troubled and difficult" relationship between respondent and the child's paternal grandparents, do not appear relevant to the determination of whether the release served the child's best interests.

discretion involves far more than a difference in judicial opinion," and that, for an abuse of discretion to exist "the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias").

II

Respondent also argues that the circuit court deprived her of her right to counsel at the hearing regarding withdrawal by denying her request for a new court-appointed attorney. However, this Court has long recognized that "there is no right to appointed counsel in a voluntary adoption matter" under MCL 710.29, *In re Blankenship*, *supra* at 713; see also *In re Koroly*, 145 Mich App 79, 88; 377 NW2d 346 (1985), even when the voluntary release for a child's adoption occurs subsequent to child protective proceedings involuntarily commenced against a respondent, *In re Jackson*, 115 Mich App 40, 50-52; 320 NW2d 285 (1982). Accordingly, we find no error in this regard.

III

Respondent lastly contends that the cumulative errors that occurred during the release hearing and the hearing regarding withdrawal deprived her of due process. We need not consider respondent's constitutional claim because she fails to cite any authority addressing the requirements of due process, or supporting her suggestion that the instant release procedures deprived her of due process. *Sherman*, *supra*.

We note briefly, however, that the lengthy release hearing afforded respondent an ample opportunity to be heard, and that any alleged shortcoming of the rehearing did not deprive respondent of due process. *In re Myers*, 131 Mich App 160, 165-166; 345 NW2d 663 (1983) (observing that, "while the Due Process Clause of the Fourteenth Amendment does guarantee an opportunity to be heard, there is no due process right to a rehearing or even to appellate review," and concluding "that the release and revocation provisions of the Michigan Adoption Code do not violate the Due Process Clause of the Fourteenth Amendment"). Moreover, the alleged improprieties primarily involve the meritless claims of error addressed earlier in this opinion.[6]

We affirm.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette

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[6] Respondent cites no authority for the proposition that in every case involving a petition to withdraw a release the trial court must make a specific finding regarding the child's best interests. Cf. *In re Burns*, *supra* at 292-293 (finding that where the "petitioner sought rehearing on the specific ground of a change of heart, the family court properly relied on the best interests of the child for guidance when determining whether to vacate [the] petitioner's" knowing and voluntary release). As noted previously, respondent did not seek rehearing because she had a change of heart, but instead challenged the voluntariness of the release.